



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 1, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PK*  
DIVISION OF LEGAL SERVICES (ELLIOTT) *JAE*

RE: DOCKET NO. 000999-TC - CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF PAY TELEPHONE CERTIFICATE NO. 5012 ISSUED TO CRESCENT PUBLIC COMMUNICATIONS, INC. FOR VIOLATION OF RULE NO. 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 03/13/01 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000999.RCM

REC'D - PSC  
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 REC'D AND REPORTING

### CASE BACKGROUND

- 12/27/96 - This company obtained Florida Public Service Commission Certificate No. 5012.
- 02/08/99 - The Commission received the company's payment for the 1998 Regulatory Assessment Fee (RAF), which included some, but not all, of the statutory penalty and interest charges. The company reported revenues in the amount of \$427,177 for the period ended December 31, 1998.
- 12/08/99 - The Division of Administration mailed the 1999 RAF return notice. Payment was due by January 31, 2000.
- 02/29/00 - The Division of Administration mailed a delinquent notice for nonpayment of the 1999 RAF.

DOCUMENT NUMBER-DATE

02752 MAR-10

FPSC-RECORDS/REPORTING

DATE: MARCH 1, 2001

- **08/07/00** - The Commission received notice that Crescent Public Communications, Inc. had filed for Chapter 11 bankruptcy protection and a request that all collection efforts be ceased.
- **10/02/00** - Order No. PSC-00-1795-PAA-TC was issued, which imposed a \$500 fine or cancelled the company's certificate.
- **02/15/01** - As of this date, the company's payment for the outstanding RAF has not been received.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.3375, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission vacate Order No. PSC-00-1795-PAA-TC?

**RECOMMENDATION:** Yes. The company had filed for bankruptcy protection prior to the issuance of the Proposed Agency Action Order being issued. Therefore, the Commission should vacate Order No. PSC-00-1795-PAA-TC, in which Crescent Public Communications, Inc. was fined \$500. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time. (Isler; Elliott)

**STAFF ANALYSIS:** Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30, or the next business day, of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

This docket was established for nonpayment of the 1999 RAF, plus statutory penalty and interest charges for the years 1998 and 1999. Although the Commission had received notice that Crescent Public Communications, Inc. had filed for Chapter 11 bankruptcy protection prior to the Commission vote on September 26, 2000 and

Order No. PSC-00-1795-PAA-TC being issued on October 2, 2000, technical staff was not aware of the pending bankruptcy proceedings. As soon as staff was made aware of the bankruptcy proceedings, the Consummating Order was not issued and this docket was put on monitor status.

Crescent Public Communications, Inc. has not paid the 1999 RAF nor the statutory penalty and interest charges for the years 1998 and 1999.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added) Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority seeking to collect a debt or engage in other economic regulation. It appears clear, however, that regulatory fees and penalties already accrued by the company are not extinguished by a Chapter 11 proceeding. If the company emerges from Chapter 11, the State could, at that time, again pursue collection.

Therefore, staff believes the Commission should vacate Order No. PSC-00-1795-PAA-TC, in which Crescent Public Communications, Inc. was fined \$500. In addition, the Division of Administration should not forward the outstanding RAFs to the Comptroller's Office for collection at this time.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed upon issuance of the Final Order. (Elliott)

**STAFF ANALYSIS:** This docket should be closed upon issuance of the Final Order.